

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION: SPECIAL USE PERMIT
FOR DCL Enterprises, Inc., d/b/a: SCARY ACRES

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County Board of Commissioners has the authority to adopt a Zoning Regulation, which shall have the force and effect of law pursuant to Neb. Rev. Stat. § 23-114 (Reissue 2007); and,

WHEREAS, said Zoning Regulations require the County Board of Commissioners to approve Special Use Permits; and

WHEREAS, DCL Enterprises, Inc. d/b/a Scary Acres has operated under renewable special use permits since March 12, 2002 as a Commercial Recreation Area providing outdoor seasonal recreation during the Halloween season as well as hosting a Renaissance Faire since 2007; and,

WHEREAS, Rebecca Horner, Planning Director has reviewed the Special Use Permit application for Scary Acres for compliance with the Sarpy County Comprehensive Plan and the Sarpy County Zoning Regulations on the property generally located at 176th & Giles and legally described as follows:

SE ¼ of Section 16 Township 14N Range 11E of the 6th p.m., Sarpy County Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board makes the following findings of fact:

- I. A public hearing regarding the Special Use Permit Application was held before the Sarpy County Planning Commission on August 19, 2009 and further, the Planning Commission gave their recommendation.
- II. A public hearing regarding the Special Use Permit Application was held by this Board.
- III. Notice of each of the Public Hearings described above was published at least once in the ten (10) day period immediately prior to each respective public hearing as required by Neb. Rev. Stat. §23-164 (Reissue 1997), and the proof of publication has been filed in the Office of the Sarpy County Clerk.
- IV. The Planning Director has made a recommendation as noted in the attached Exhibit "A", which Exhibit "A" includes the Planning Director report.
- V. The applicant, DCL Enterprises, Inc. d/b/a Scary Acres has submitted a Revised Operational Plan, which document is incorporated herein by reference and attached to this Resolution as Exhibit "B". Said Revised Operational Plan not only describes the dates and times of operation but also includes information regarding security and dust control requirements for the various events on the property.
- VI. The Special Use Permit Application is in compliance with the Comprehensive Development Plan.

FURTHER BE IT RESOLVED THAT this Board in light of the above recited findings of fact, after due deliberation and consideration, approves the Special Use Permit as recommended by the Planning Director in Exhibit A, for a 10 year period with an expiration on the 1st day of November 20 19 for the Commercial Recreational Area, inclusive of the Revised Operational Plan on the above described property.

Dated this 1st day of September, 2009.

Moved by Rich Jansen seconded by Rusty Hike, that

the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

none

none

ABSTAIN:

none

[Signature]
 County Clerk
[Signature]



Approved as to form:

[Signature]
 County Attorney

Memorandum

TO: Sarpy County Board of Commissioners
CC: Planning Department
From: Michelle Alfaro, Planning Assistant
Date: 09-22-2009
RE: September 1, 2009 County Board Meeting

The Scary Acres staff report presented to the County Board on September 1, 2009, had a clerical error in the Planning Commission motion. The verbiage within the motion was correct; however, the vote was incorrect. I have corrected my error within the staff report to reflect the true motion as follows:

- *Whitfield moved, seconded by Wear to approve the amendment to special use permit to include the revised operational plan and new site plan showing dimensions prior to scheduling to County Board, as it meets the zoning regulations of Sarpy County. **Ayes:** Bliss, Fenster, Gonzalez, Gross, Marquardt, Torczon, Wear, Wees, and Whitfield. **Nays:** None. **Abstain:** None. **Absent:** Dunbar and Stuart. **Motion carried.** (9-0)*

I apologize for any inconvenience this may have caused.

Sincerely,



Michelle Alfaro, Planning Assistant

Sarpy County
 AMENDED
 County Board of Commissioners Report
 September 1, 2009

Subject	Type	By
Amendment to existing Special Permit for commercial recreation, Scary Acres located at: SE ¼ of Section 16 Township 14N Range 11E of the 6 th p.m., Sarpy County Nebraska.	Resolution and public hearing	Rebecca Horner, Planning Director.

This is a request for approval of amendments to the special use permit to:

1. Adopt a new operations plan that provides additional flexibility; and
2. Moves the corn maze to the east and replaces the corn maze with additional parking; and
3. Increases the duration of the permit to extend through November 2019.

- Comprehensive Development Plan

- The Comprehensive Plan designation is urban residential. Commercial Recreation Areas are permitted special uses in the AG, Agricultural district.

- Zoning

- The existing zoning is AG, Agricultural.
- Scary Acres is classified as a commercial recreational use. Commercial Recreation Areas are a permitted special use in the AG district. Scary Acres has operated with a special use permit since 2002. An operational plan was approved with the special use permit that dictated hours and ticket sales.

- History

- A five year renewable special use permit was granted on March 12th, 2002.
- A five year renewable special use permit was granted on June 20th, 2006.
- A noise complaint was investigated in October 2007. The noise was not found to exceed the permitted 70 decibel level, however a violation was found relative to hours of operation.
- A sign complain was investigated in July/ August 2008. The sign was found non-complaint and Scary Acres was sent a violation notice to bring the sign into conformance.
- Scary Acres was updated to amend the operation plan to extend the hours to allow the sale of tickets until 12:30am on Friday and Saturday during the duration of the season in September of 2008. Nighttime noise levels are limited to 50 dbl after the hours of 10:00pm and require the premises to close whereby all patrons have exited the premises by 1:00am or 1:15am.
- The Planning Department has not received any complaints since the application was amended in 2008.

- Summary of Request

- The operational characteristic of the use is to provide outdoor seasonal recreation during the Halloween season through a haunted house, corn maze, and haunted tower attractions using a variety of tactics to scare patrons including intermittent loud noises. The outdoor recreational use also includes an area of bon fires for groups. Concessions are sold on the premises. The recreational use includes a renaissance fair in the spring of

each year. The applicant requests the duration of the permit be through November 1, 2019. The applicant requests:

Spring Recreation	Dates of use	Hours of use	Days of use	Special Restrictions
Renaissance Faire	Generally, April and May	9:00am – 9:00pm	Saturday, Sunday and Memorial Day	None
Festivals (other)	Variable – to be reviewed with the administrative amendment	9:00am-9:00pm	Variable – to be reviewed with the administrative amendment	No more than 30 days (includes Renaissance Faire) may be approved by administrative amendment. Noise restrictions and dust application may be necessary based on hours and traffic that exceeds 300 cars per day.
Halloween Scary Acres	Third week of September through November 1.	Weekdays: 6:30pm – 11:00pm (all patrons exited) Weekends: 6:30pm – 1:00am (all patrons exited)	Monday through Sunday	Noise not to exceed 50 decibels at the property line after 10:00pm. No alcohol permitted.

- o The Planning Commission made the approval contingent upon providing a scaled site plan. Planning Department staff assisted the applicant with this task last week. The applicant indicated they were going to provide an engineered site plan prior to the County Board meeting. The applicant provided a site plan that was not to scale. The scale helps to establish setbacks from buildings and attractions on the site.
- o Permitted special uses are uses in any district that may or may not be compatible with adjacent uses. A special use permit is required so the governing bodies may review each case individually based on surrounding uses and operational characteristics.
- o The Comprehensive Plan indicates the area around and including Scary Acres as Urban Residential which may mean that the special permitted use of Commercial Recreation shall expire and not be renewed due to adjacent incompatibility. If Scary Acres is interested in maintaining a long term special use permit at this location the business must find a way to remain compatible with adjacent uses and more specifically to find a way to reduce noise incompatibility as the area continues to urbanize.
- o Staff received comments from an adjacent property owner. Comments are attached.

- Planning Commission Action

- *Whitfield moved, seconded by Wear to approve the amendment to special use permit to include the revised operational plan and new site plan showing dimensions prior to scheduling to County Board, as it meets the zoning regulations of Sarpy County. **Ayes:** Bliss, Fenster, Gonzalez, Gross, Marquardt, Torczon, Wear, Wees and Whitfield. **Nays:** None **Abstain:** None. **Absent:** Dunbar and Stuart. **Motion Carried (9-0)***

- Recommendation

- Recommend approval of the amended special use permit through November 1, 2019 with the amended site plan showing the corn maze moving to the east and the existing location replaced with parking, as it is in conformance with the Comprehensive Plan and Zoning Regulations as noted below:

Spring Recreation	Dates of use	Hours of use	Days of use	Special Restrictions
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Respectfully submitted by:



Rebecca Horner
Planning Director

Revised Operational Plan
Amendment DCL Enterprises, Inc.
On the S ½ of SE ¼ of sec 16, TWP-14N
Rng 11E of NE 6th P.M. Sarpy County Nebraska
(approx. 172nd & Giles)

This is an amendment to the operational plan for the Special Use Permit of DCL Enterprises, Inc on the S ½ of the SE ¼ of section 16, Township 14 North, Range 11 East of the 6th P.M. Sarpy County Nebraska originally approved March 12, 2002, and amended on June 20, 2006; February 12, 2008; and September 23, 2008. The operational plan is being amended in conjunction with an application for an amendment to the Special Use Permit consistent with the existing operational plan as previously amended and as it is amended herein. The amendment to the Special Use Permit is being requested not only to approve this amendment to the operational plan but to amend the site plan as attached and extend the permit for 10 years to November 1, 2019.

The operational plan is also being amended to simplify the operational times and generalize the use of the property in order to create a continuum of permitted use without the necessity of having to amend the permit each year or for each event.

The site plan has been amended to move the corn maze to the East of the existing location immediately adjacent to and on the East side of the creek. This provides for parking to extend farther into the property in order to reduce or eliminate parking that was occurring on Giles Road. The site plan also indicates additional or future attractions.

The main operational use of the property is as a haunted attraction. The period of operation for the haunted attraction shall be from the third Friday in September of each year through October 31 of each year, except when October 31 falls on a Thursday or a Friday then the period of operation for the haunted attraction will be through November 1st. The gates will open at 6:30 p.m. with ticket sales to begin at 7:00 p.m. On weekdays (Sunday – Thursday) ticket sales shall end at 10:00 p.m. with the attraction closing at 10:30 p.m. and all patrons shall be off the property by 11:00 p.m. On weekends (Friday & Saturday) ticket sales shall end at 12:00 a.m. (Midnight) with the attractions closing at 12:30 a.m., with the exception of the Dark Forest attraction which shall close at 12:00 a.m. (midnight), and all patrons shall be off the property by 1:00 a.m. Sound effects used in the attraction shall not exceed 50 decibels after 10:00 p.m. as measured from the property line. No alcohol will be served on the property during the period of operation as a haunted attraction.

Security is provided at all times by off-duty police officers as well as other security personnel. There are also closed-circuit cameras over the premises and no one can enter or exit the premises without being seen and recorded on the cameras. The applicant shall also participate with the county on dust control on Giles Road.

The applicant has also been contacted by various groups to hold events on the property. The property shall be operated at various times during the year in any combination of

days for a maximum of thirty (30) days per year for events including Renaissance Faire previously approved as an amendment to the Special Use Permit. All events will be under the control and operation of the applicant.

The Renaissance Faire shall typically be the Saturday, Sunday and Monday of Memorial Day Weekend but may change to other dates and may be increased or decreased in days of duration.

Such events shall only be operational between the hours of 9:00 a.m. and 9:00 p.m. Security shall be commensurate with the type of event and the number in attendance. Security cameras will also be utilized. Patrons attending the events may camp on the property but no earlier than the night before the event and no later than the morning following the event. Prior to holding each of such events (except the Renaissance Faire), DCL Enterprises shall provide a written description of the event to the county planning director. The written description shall contain a short narrative of the event(s) that is/are to occur, along with an estimate of the number of people who will attend, the hours of operation and the date(s). The planning director shall forthwith submit a copy of the same to the county highway department for review. The planning director shall review the information and determine whether the event is consistent with and within the parameters of the Special Use Permit as amended from time to time. In addition, the planning director may require dust suppressant on Giles Road on the recommendation of the county highway department. Within two (2) weeks of receipt of the written description, the planning director shall notify the Special Use Permit Holder of approval, disapproval or approval with conditions. In the event that it is approved with conditions unacceptable to the Special use Permit Holder or disapproved, the planning director and the Special Use Permit Holder shall attempt to resolve whatever issues may exist that are not satisfactory to either or both the planning department and the Special Use Permit Holder. If the issue(s) is/are not resolved the Special Use Permit Holder shall not hold such event unless an application to amend the Special Use Permit is made and approved. If, within said two (2) week period, no approval or disapproval is received by Special Use Permit Holder, said event shall be deemed approved as provided in the written description.

Any notice given hereunder shall be in writing and personally delivered or sent by first class mail postage prepaid to:

Sarpy County Planning Director
1210 Golden Gate Drive
Papillion, NE 68046

and also to the

Special Use Permit Holder
c/o Patrick J. Sullivan
1246 Golden Gate Drive, Suite 1
Papillion, Nebraska 68046

or at such other address as either party may from time to time designate in writing. Each such notice shall be deemed to have been given at the time it shall be personally delivered to such address or deposited in the United States mail in the manner prescribed herein. Except as provided in this amendment, the operational plan and all previous amendments thereto are hereby confirmed and continue to be in effect. To the extent that any terms, conditions or representations in this amendment contradict any terms, conditions or representations in the operational plan or any previous amendments thereto this amendment shall control.

Respectfully submitted,
DCL Enterprises, Inc

By:
Don Losole, President

AUG 19 2009

SARPY COUNTY
PLANNING DEPARTMENT

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Except as provided in this amendment, the operational plan and all previous amendments thereto are hereby confirmed and continue to be in effect. To the extent that any terms, conditions or representations in this amendment contradict any terms, conditions or representations in the operational plan or any previous amendments thereto this amendment shall control.

Respectfully submitted,
DCL Enterprises, Inc

By:
Don Losole, President

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